

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AL JAVIER,

Plaintiff,

-against-

ANTHONY RUSSO, et al.,

Defendants.

21-CV-7097 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated at Green Haven Correctional Facility, proceeds *pro se*. By order dated September 9, 2021, the Court granted Plaintiff's request to proceed *in forma pauperis*, which allowed him to make installment payments rather than prepaying the full filing fee. (ECF 5.) The Court received a payment of \$350.00 from Plaintiff's prison account on September 28, 2021, which it processed under receipt number 465401286796. This satisfied the full filing fee owed.

Plaintiff filed an amended complaint on December 2, 2021.<sup>1</sup> (ECF 9.) On January 25, 2022, the Court's Finance Department received another \$350.00 check from Plaintiff's prison account for this action, which was processed under receipt number 465401292628.

Because Plaintiff had already paid the full filing fee, and was not required to pay an additional filing fee for this action, the Clerk of Court is directed to return the \$350.00 overpayment to Plaintiff.

---

<sup>1</sup> The action was closed because Plaintiff did not file the amended complaint within the time allowed. Thereafter, the Court received Plaintiff's amended complaint and vacated the order of dismissal (ECF 11) because Plaintiff showed good cause for his late filing.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: January 28, 2022  
New York, New York

/s/ Laura Taylor Swain

---

LAURA TAYLOR SWAIN  
Chief United States District Judge